

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HUMAN & JOY CORPORATION,

Plaintiff,

v.

SEATTLE OFFICE OF LABOR  
STANDARDS, *et al.*,

Defendants.

Case No. C19-1546 RSL-MLP

ORDER

Plaintiff filed a motion for an order compelling Defendant City of Seattle to produce documents to the Court for an *in camera review* to address two of Defendant's asserted privilege claims, arguing the crime-fraud exception to the attorney-client privilege applied and that the that there was no common interest privilege in this matter. (Dkt. # 21.) In Defendant's opposition to Plaintiff's motion, Defendant requested attorney's fees in the amount of \$7,620.00, asserting the motion was baseless. (Dkt. ## 24 at 2, 26 at 4.) The Court heard oral argument and denied Plaintiff's motion. (Dkt. # 29.) The Court also denied Defendant's request for an award of reasonable fees incurred in opposing Plaintiff's common interest privilege argument. The Court directed Defendant to submit a declaration outlining the reasonable attorney's fees and costs incurred in specifically opposing Plaintiff's crime-fraud exception argument for the Court's

1 consideration. Defendant submitted a declaration requesting a fee award of \$8,428.00. (Dkt. # 30  
2 at 4.) Defendant states this amount represents 76% of the total fees incurred in opposing  
3 Plaintiff's motion, which is the approximate amount it incurred in opposing Plaintiff's crime-  
4 fraud exception argument. (*Id.* at 3.) This amount also includes fees incurred in preparing and  
5 attending oral argument. (*Id.* at 4.) Plaintiff objected to Defendant's request, arguing it was  
6 substantially justified in bringing its motion given the limited case law regarding the crime-fraud  
7 exception. (Dkt. # 31.) Defendant responded to Plaintiff's objections and argued the motion was  
8 not substantially justified because Plaintiff cited only state law cases that expanded the crime-  
9 fraud exception in circumstances inapplicable to this matter, rather than pointing to applicable  
10 federal law, and increased its request to \$9,428.00 based on additional attorney's fees incurred in  
11 preparing its response. (Dkt. # 32.) Lastly, Plaintiff replied to Defendant's response. (Dkt. # 34.)

12 Federal Rule of Civil Procedure 37(a)(5)(B) governs payment of attorney's fees upon an  
13 unsuccessful motion to compel. The rule provides that a court must require the movant to pay the  
14 opposing party's reasonable expenses, including attorney's fees, unless "the motion was  
15 substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P.  
16 37(a)(5)(B).

17 Here, the Court concludes that the circumstances surrounding Plaintiff's motion to  
18 compel would make an award of attorney's fees unjust. The Court denied Plaintiff's motion to  
19 compel based on the crime-fraud exception to the attorney-client privilege because although it  
20 raised suspicions of some unspecified crime-fraud, it failed to present specific evidence to  
21 sufficiently identify a crime-fraud. The Court was willing to dismiss the motion without  
22 prejudice and reconsider Plaintiff's motion if Plaintiff uncovered additional information to  
23 articulate a crime-fraud. It was only after the Court was informed that the discovery deadline was

1 that day, and therefore there would be no further discovery, that the Court denied Plaintiff's  
2 motion with prejudice. Given these circumstances, it would be unjust to impose attorney's fees.  
3 Accordingly, Defendant's request for attorney's fees is DENIED.

4 The Clerk is directed to send copies of this order to the parties and to the Honorable  
5 Robert S. Lasnik.

6 Dated this 29th day of September, 2020.

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9 MICHELLE L. PETERSON  
10 United States Magistrate Judge  
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